

Message Text

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ACTION AF-08

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FM AMEMBASSY NAIROBI

TO SECSTATE WASHDC PRIORITY 6445

INFO AMEMBASSY DAR ES SALAAM

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PASS EXIMBANK

E. O. 11652: N/A

TAGS: EAIR, KE, TZ, BGEN

SUBJ: STATUS REPORT ON EAST AFRICAN AIRWAYS AND DISPOSITION
OF FLEET

REF: STATE 38096

1. SUMMARY: PERMSEC GOK TREASURY REPLIED TO EMB INQUIRY RE KENYA AIRWAYS INTENTIONS TO OPERATE DC-9 AIRCRAFT ON KENYAN TERRITORY. EAC FINANCE AND COMMUNICATIONS COUNCIL HAS SO FAR FAILED TO MEET FOR DISCUSSIONS ON DISPOSITION EAA ASSETS. MEANWHILE SHELL OIL HAS PETITIONED HIGH COURT OF KENYA TO PLACE EAA IN LIQUIDATION. OTHER CREDITORS INVITED TO SUPPORT SUIT. END SUMMARY.

2. FOLLOWING IS TEXT OF LETTER RECEIVED FROM GOK TREASURY PERMSEC IN RESPONSE TO EMB INQUIRY OF FEB 16 REGARDING GOK AND KENYA AIRWAYS INTENTIONS TO OPERATE DC-9 AIRCRAFT OWNED BY EAA. (NOTE: EMB LETTER FORWARDED TO GOK PRIOR TO RECEIPT OF REFTEL CONTAINING SPECIFIC EXIM REQUESTS.)

3. QUOTE. IF REFER TO YOUR LETTER DATED 16TH FEBRUARY, 1977.

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THE DECISION OF THE KENYA GOVERNMENT TO PUT TO SERVICE ONE OF THE THREE DC-9'S OWNED BY E.A.A. WAS GUIDED BY THE VIEW THAT IT IS ECONOMICALLY AND COMMERCIALY UNNECESSARY TO HAVE SUCH EXPENSIVE EQUIPMENT LYING IDLE WHICH CONSIDERABLE TRAFFIC IS AVAILABLE FOR USE OF THE AIRCRAFT. IT WAS ALSO GUIDED BY THE ACTIONS OF OTHER PARTNER STATES WHICH ARE UNDER-

STOOD TO HAVE PUT SIMILAR EQUIPMENT INTO SERVICE IN THEIR OWN COUNTRIES.

WHILE I BELIEVE THAT THE NEW KENYA AIRWAYS WOULD BE INTERESTED IN ACQUISITION OF ONE OR MORE OF THE DC-9'S OWNED BY E.A.A., THE DIFFICULTY ARISES IN THAT THERE NOW APPEARS TO BE NO ORGANIZED INSTITUTION WITH WHICH KENYA AIRWAYS CAN DISCUSS APPROPRIATE ARRANGEMENTS FOR USE OF THE DC-9'S. SUCH ARRANGEMENTS WOULD OBVIOUSLY NEED TO BE APPROVED BY EITHER THE E.A.A. BOARD WHICH IS CURRENTLY UNABLE TO MEET OR THE APPROPRIATE COUNCIL OF THE PARTNER STATES WHICH AGAIN IS UNABLE TO MEET. WHILE KENYA AIRWAYS AND THE KENYA GOVERNMENT WOULD, THEREFORE, BE INTERESTED IN DISCUSSING THE FUTURE AVAILABILITY OF THESE AIRCRAFT, WE FEEL THAT SUCH DISCUSSIONS WITH THE EXPORT-IMPORT BANK WOULD BE INCONCLUSIVE UNLESS THE EXPORT-IMPORT BANK WERE IN A POSITION TO DISPOSE OF THE AIRCRAFT FREELY. IN THIS CONNECTION, IT IS REALLY THE EXPORT-IMPORT BANK WHICH SHOULD INDICATE ITS INTENTIONS WITH REGARD TO THE AIRCRAFT OVER WHICH THEY HOLD AN OUTSTANDING DEBENTURE.

I HAVE BEEN INFORMED BY THE MANAGEMENT OF KENYA AIRWAYS THAT BEFORE PUTTING THE DC-9 INTO SERVICE, APPROPRIATE FLIGHT AND OTHER INSURANCE WILL BE OBTAINED FROM THE KENYA NATIONAL ASSURANCE COMPANY LTD.

YOURS FAITHFULLY,
(N. NGANGA)
PERMANENT SECRETARY TO THE TREASURY
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4. ALTHOUGH SECOND PARAGRAPH OF TREASURY LETTER PLEADING INABILITY TO CONCLUDE QUOTE APPROPRIATE ARRANGEMENTS UNQUOTE WITH RESPONSIBLE COMMUNITY AUTHORITIES SOUNDS LIKE AN EVASION OF GOVERNMENT'S FINANCIAL OBLIGATIONS VIS A VIS LEGAL OWNER OF AIRPLANES, EMB CAN VERIFY THROUGH ITS OWN FRUSTRATING INQUIRIES OVER LAST WEEK THAT EAA AFFAIRS HAVE FALLEN INTO COMPLETE DISORGANIZATION. MANAGEMENT AT NAIROBI HEADQUARTERS WAS EFFECTIVELY DISBANDED FEB 22, YET OFFICIALS HAD NO IDEA WHO OR WHAT BODY WOULD CONSTITUTE THE LEGAL SUCCESSOR TO EAA'S BOARD OF DIRECTORS. BEST SUGGESTION WAS TO WRITE TO EAC HEADQUARTERS, ARUSHA, TANZANIA. IN ABSENCE OF TRI-STATE DECISION ON DISPOSITION OF ASSETS, KENYA AIRWAYS AND GOK REALLY HAVE NO WAY OF LEGALIZING THEIR DE FACTO CONTROL OVER DC-9'S.

5. ONE ESCAPE FROM THIS CATCH-22 SITUATION MAY BE COURT ACTION AGAINST EAA. ONE CREDITOR, SHELL OIL, IS ALREADY PURSUING THIS COURSE BY SUBMISSION OF PETITION TO PUT AIR-

WAYS IN LIQUIDATION UNDER COMPANIES ACT OF KENYA. HIGH COURT OF KENYA WILL HEAR SUIT ON MARCH 18. KENYA GAZETTE OF FEB 25 CARRIED NOTICE OF SUIT AND REFERRED INTERESTED PARTIES TO LAW FIRM HAMILTON, HARRISON AND MATHEWS, WHICH UNDER PAYMENT OF FEE WOULD SUPPLY COPY OF PETITION. HHM INVITED CREDITORS TO SUBMIT NOTIFICATION OF INTENTION TO SUPPORT OR OPPOSE PETITION BY 4:00 P.M., MARCH 17. EMB WILL REQUEST COPY OF BRIEF FROM HHM AND POUCH TO EXIM.

6. EMBOFF CALLED SENIOR COUNSEL IN GOK ATTORNEY GENERAL'S OFFICE IN ATTEMPT TO CLARIFY IMPLICATIONS OF SHELL OIL SUIT FOR OTHER CREDITORS SUCH AS EXIMBANK. COUNSEL IS PRESENTLY ENGAGED IN PREPARING BRIEF FOR GOK SORTING OUT GOVERNMENT'S INTERESTS IN AIRWAYS AND THEREFORE HAD TO OBSERVE CERTAIN AMOUNT OF PROFESSIONAL CIRCUMSPECTION. HE WAS, HOWEVER, FAMILIAR WITH PERMSEC'S REPLY TO EMB AND NOTED ERROR IN REFERRING TO EXIM'S QUOTE OUTSTANDING DEBENTURE UNQUOTE ON LIMITED OFFICIAL USE

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AIRCRAFT. TO HIS KNOWLEDGE, EXIM DOES NOT REPEAT NOT HOLD LIEN ON PLANES BUT MERELY CLAIM TO SHARE OF EAA ASSETS. EXIM, THEREFORE, COULD NOT PROPERLY ISSUE INSTRUCTIONS AS TO DISPOSITION OF AIRCRAFT.

7. IF SUCCESSFUL, SHELL OIL PETITION WOULD HAVE EFFECT OF WINDING UP EAA AND PERMITTING COURT-APPOINTED REPRESENTATIVE TO MAKE APPROPRIATE CASH SETTLEMENTS TO INDIVIDUAL CORPORATION CREDITORS.

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ACTION AF-08

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P R 010900Z MAR 77
FM AMEMBASSY NAIROBI
TO SECSTATE WASHDC PRIORITY 6446
INFO AMEMBASSY DAR ES SALAAM

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8. NAIROBI PRESS REPORTED FEB 26 THAT SIMBAIR, A SUBSIDIARY COMPANY OF EAA, WILL GO INTO VOLUNTARY LIQUIDATION. TWO LIQUIDATORS HAVE BEEN APPOINTED.

9. TO SUMMARIZE STATE OF PLAY, EMB SEES THREE POSSIBLE OUTCOMES TO EAA IMPASSE:

(A) POLITICAL DIVISION OF EAA ASSETS VIA EAC FINANCE AND COMMUNICATIONS COUNCIL, WHEREBY GOK WOULD PROBABLY REQUEST ONE OR TWO DC-9'S. KENYA AIRWAYS MAY THEN ACCEPT PRO RATA SHARE OF OUTSTANDING DEBT ON ALL THREE PLANES. ALTERNATIVELY GOK MAY CONSIDER DC-9 DEBT ONLY AS ONE COMPONENT OF TOTAL EAA OBLIGATION AND NEGOTIATE THIS ISSUE SEPARATELY.

(B) LEGAL DECISION IN FAVOR OF LIQUIDATION. PHYSICAL ASSETS WOULD PRESUMABLY BE SOLD BY APPOINTED LIQUIDATOR, AFTER EVALUATION. GOK COULD THEN BID ON DESIRED AIRCRAFT WITH EXIM AND MCDONNELL-DOUGLAS GAINING REIMBURSEMENT THROUGH COURT REPRESENTATIVE.

(C) TRI-STATE COUNCIL POSTPONED INDEFINITELY AND SHELL PETITION FAILS IN COURT. THIS WORST-CASE OUTCOME LEAVES LIMITED OFFICIAL USE

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AIRCRAFT IN LIMBO BUT VULNERABLE TO UNILATERAL GRAB BY NATIONAL AIRLINES SUCCEEDING EAA.

10. AS EMB LETTER WAS FORWARDED TO GOK TREASURY PRIOR TO RECEIPT OF REFTEL, WE HAVE NOT ELICITED GOK AGREEMENT TO SAFEGUARD TWO DC-9'S ON KENYAN TERRITORY OR EXPRESSED EXIM'S PREFERENCES REGARDING CONNIBALIZATION OF GROUNDED PLANE. IN LIGHT OF SENIOR COUNSEL'S OPINION CONCERNING EXIM'S AUTHORITY OVER AIRCRAFT, GOK'S RESPONSE LIKELY TO BE AT BEST NON-COMMITTAL, SINCE ITS LEGAL RESPONSIBILITY FOR EAA AIRCRAFT IS PRESENTLY AMBIGUOUS. NEVERTHELESS, EMB BELIEVES GOK SINCERELY CONCERNED ABOUT PROTECTING SERVICEABILITY OF DC-9'S PRIMARILY BECAUSE IT HOPES TO ACQUIRE THEM IN AN EVENTUAL DIVISION OF THE SPOILS. AS REPORTED PREVIOUSLY, SATISFACTORY INSURANCE COVERAGE HAS BEEN MAINTAINED ON BOTH PLANES.

11. RATHER THAN PRESSING GOK FOR WRITTEN ASSURANCES WHICH COULD BE INTERPRETED BY ITS LEGAL ADVISORS AS SOLICITING BINDING GUARANTEES, EMB SUGGESTS DC-9 MAINTENANCE PROBLEM

BE RAISED WITH KENYA AIRWAYS STAFF. MCDONNELL-DOUGLAS REP
RECENTLY IN NAIROBI REPORTED CONVERSATION WITH MEMBER OF
KENYA AIRWAYS BOARD, WHO BROACHED POSSIBILITY OF AIRCRAFT
MANUFACTURER PROVIDING INTERIM TECHNICAL/MAINTENANCE
ASSISTANCE. WE DO NOT KNOW SUBSTANCE OF MCDONNELL-DOUGLAS'S
REPLY. PLS ADVISE WHAT, IF ANY, REPLY SHOULD BE ADDRESSED
TO PERMSEC'S LETTER.

12. EXIM SHOULD ALSO CONSIDER OPPORTUNITY OF ENGAGING LEGAL
COUNSEL TO FOLLOW SHELL OIL SUIT. EMB WILLING TO RECOMMEND
AND CONTACT LOCAL FIRM ON BEHALF OF BANK.

DECON 2/28/78

MARSHALL

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